

Justice Committee
Offensive Behaviour at Football and Threatening Communications (Repeal)
(Scotland) Bill

Written submission from:

The Coalition for Racial Equality and Rights

(Contact: Rebecca Marek, Parliamentary and Policy Officer, rebecca@crer.org.uk)

1. Do you agree with the proposal in the Bill to repeal the 2012 Act? What are your reasons for coming to this view?

CRER is in favour of the proposal to repeal the 2012 Act. As a strategic race equality organisation, we are supportive of initiatives and policies which prevent hatred and discrimination against BME groups.

However, we did not offer our support to the Offensive Behaviour at Football and Threatening Communications (Scotland) Act, as we were concerned about the duplication of legislation the Act created and its limited impact outwith football. Five years on, we remain unconvinced that the Act is necessary, and believe that it creates confusion and double-standards within hate crime policy and legislation.

2. Did you support the original legislation?

CRER did not support the original legislation. Our [2011 submission](#) to the Justice Committee's call for evidence highlighted our key concerns, including:

- As a majority of the original Bill's provisions are addressed by existing legislation (e.g. The Public Order Act 1986, the Crime and Disorder Act 1998, and the Criminal Justice (Scotland) Act 2003), we believed the Bill was likely to cause confusion rather than add clarity.
- The Bill's emphasis on football could be perceived as an exercise in damage limitation, given its high international profile, rather than a genuine effort to address sectarian and racist behaviours.
- Given the scale of racist hate incidents in Scotland and the presumption that only a small proportion of these took place within a football-related environment, we were of the opinion that the Bill was unlikely to make a significant impact on racist hate crime with its limited scope.

CRER recommended that, rather than implement this particular piece of legislation, the Scottish Government instead increase its efforts to eradicate hate crime through robust education and training campaigns, race and rights education in the wider community, and support to the police service.

3. Do you consider that other existing provisions of criminal law are sufficient to prosecute offensive behaviour related to football which leads to public

disorder? If so, could you specify the criminal law provisions? Or does repeal of section 1 risk creating a gap in the criminal law?

CRER considers that, while additional clarity and cohesion within hate crime legislation may be beneficial, existing provisions of criminal law are sufficient to prosecute offensive behaviour which leads to public disorder, regardless of this behaviour's relationship to football. We do not believe a hate incident's occurrence at a football match merits particular legislation; if the legislation is robust, it should apply in all places and contexts. In our experience, it is how the law is implemented (e.g. whether complaints are taken seriously by police, whether cases are properly followed-through by prosecutors) that has the most significant impact on communities affected by hate crime.

In our view, the relevant criminal law provisions include:

- The Public Order Act 1986 (Part 3)
- The Criminal Law (Consolidation) (Scotland) Act 1995 (Section 50A)
- The Crime and Disorder Act 1998 (Sections 33 and 96)
- The Criminal Justice (Scotland) Act 2003 (Section 74)

We are also aware of the ongoing review of hate crime legislation being conducted by Lord Bracadale, and look forward to the findings of this review in relation to existing criminal law provisions.

4. Do you have a view on the focus of section 1 of the 2012 Act, which criminalises behaviour surrounding watching, attending or travelling to or from football matches, which may not be criminalised in other settings?

CRER believes that the law concerning racial or religious hate crime should apply uniformly across all public settings. We remain unconvinced that behaviour that would otherwise not be considered criminal should be criminalised in one particular setting.

If behaviour in these particular settings is causing alarm or distress and is motivated by racial or religious hatred, or malice towards a particular group, we would expect the criminal law provisions outlined above to be sufficient to criminalise the behaviour. If the behaviour does not meet the threshold criminal behaviour outwith the context of football, we do not believe that behaviour should be considered criminal. If legislation is implemented robustly, the additional provisions of this Act are not necessary.

5. Do you consider that other existing provisions of criminal law are sufficient to prosecute threats made with the intent of causing a person or persons fear or alarm or inciting religious hatred? If so, could you specify the criminal law provisions? Or does repeal of section 6 risk creating a gap in the criminal law?

CRER does consider that other existing provisions of criminal law are sufficient to prosecute threatening communications made with the intent of causing alarm or inciting religious (and racial) hatred.

In particular, outwith the legislation already noted, we cite the provisions outlined in the Communications Act 2003 (Section 127) and the Criminal Justice and Licensing (Scotland) Act 2010 (Section 38). In many instances, the provisions in legislation such as the Public Order Act 1986, the Crime and Disorder Act 1998, and the Criminal Justice (Scotland) Act 2003 would sufficiently apply.

However, we again emphasise that it is how well the law is implemented that is key to the experience of BME communities.

6. Do you have a view on the proposed transitional arrangements in the Bill: that there should be no further convictions for section 1 and 6 offences from the date on which the repeal of those offences takes effect; and that the police will cease issuing fixed penalty notices at least from the point at which the Bill is passed?

CRER agrees that there should be no further convictions for Section 1 and 6 offences from the date on which the repeal of those offences would take effect. Rather, existing laws should be utilised from that date onwards.

7. To what extent do you consider that the 2012 Act has assisted in tackling sectarianism?

As CRER's focus is eradicating racism and racial hatred, we are not able to offer a substantiated opinion on whether the 2012 Act has assisted in tackling sectarianism.

However, we believe the Act has not made any significant progress in tackling racial hatred. To eradicate sectarian, racism, and other forms of prejudice, the focus must be on to what extent current legislation is understood and applied effectively by police, criminal justice practitioners, and other relevant decision-makers. If current legislation is applied properly, there is simply not a need for the 2012 Act.